

Office of the Secretary, HUD

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this section, the Secretary will, where applicable, include a statement with the data or information to the effect that:

(i) The GSE regards the data or information as proprietary information and/or confidential business information;

(ii) Public disclosure of the data or information may cause competitive harm to the GSE; and

(iii) The Secretary has determined that the data or information is proprietary information and/or confidential business information.

(2) To the extent practicable, the Secretary will provide notice to the GSE after a request from the persons or entities described in paragraphs (a)(1)–(4) of this section for proprietary information or confidential business information is received and before the data or information is provided in response to the request.

(c) *Procedures for requests pursuant to subpoena or other legal process.* The procedures in 24 CFR 15.71–15.74 shall be followed when a subpoena, order, or other demand of a court or other authority is issued for the production or disclosure of any GSE data or information that:

(1) Is contained in HUD's files;

(2) Relates to material contained in HUD's files; or

(3) Was acquired by any person while such person was an employee of HUD, as a part of the performance of the employee's official duties or because of the employee's official status.

(d) *Requests pursuant to subpoena or other legal process not served on HUD.* If an individual who is not a HUD employee or an entity other than HUD is served with a subpoena, order, or other demand of a court or authority for the production or disclosure of HUD data or information relating to a GSE and such data or information may not be disclosed to the public under this subpart or 24 CFR part 15, such individual or entity shall comply with 24 CFR 15.71–15.74 as if the individual or entity is a HUD employee, including immediately notifying HUD in accordance with the procedures set forth in 24 CFR 15.73(a).

(e) *Reservation of additional actions.* Nothing in this section precludes further action by the Secretary, in his or

her discretion, to protect data or information submitted by a GSE from unwarranted disclosure in appropriate circumstances.

Subpart G—Procedures for Actions and Review of Actions

§ 81.81 General.

This subpart sets forth procedures for:

(a) The Secretary to issue cease-and-desist orders and impose civil money penalties to enforce the housing goal provisions implemented in subpart B of this part and the information submission and reporting requirements implemented in subpart E of this part; and

(b) Hearings, in accordance with 12 U.S.C. 4542(c)(4)(B), on the Secretary's disapproval of new programs that the Secretary determines are not in the public interest.

§ 81.82 Cease-and-desist proceedings.

(a) *Issuance.* The Secretary may issue and serve upon a GSE a written notice of charges justifying issuance of a cease-and-desist order, if the Secretary determines the GSE:

(1) Has failed to submit, within the time prescribed in § 81.22, a housing plan that substantially complies with 12 U.S.C. 4566(c), as implemented by § 81.22;

(2) Is failing or has failed, or there is reasonable cause to believe that the GSE is about to fail, to make a good-faith effort to comply with a housing plan submitted to and approved by the Secretary; or

(3) Has failed to submit any of the information required under sections 309(m) or (n) of the Fannie Mae Charter Act, sections 307(e) or (f) of the Freddie Mac Act, or subpart E of this part.

(b) *Procedures—(1) Content of notice.* The notice of charges shall provide:

(i) A concise statement of the facts constituting the alleged misconduct and the violations with which the GSE is charged;

(ii) Notice of the GSE's right to a hearing on the record;

(iii) A time and date for a hearing on the record;

(iv) A statement of the consequences of failing to contest the matter; and

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(v) The effective date of the order if the GSE does not contest the matter.

(2) *Administrative Law Judge.* A HUD Administrative Law Judge (ALJ) shall preside over any hearing conducted under this section. The hearing shall be conducted in accordance with § 81.84 and, to the extent the provisions are not inconsistent with any of the procedures in this part or FHEFSSA, with 24 CFR part 26, subpart B.

(3) *Issuance of order.* If the GSE consents to the issuance of the order or the ALJ finds, based on the hearing record, that a preponderance of the evidence established the conduct specified in the notice of charges, the ALJ may issue and serve upon the GSE an order requiring the GSE to:

- (i) Submit a housing plan that substantially complies with 12 U.S.C. 4566(c), as implemented by § 81.22;
- (ii) Comply with a housing plan; or
- (iii) Provide the information required under subpart E of this part.

(4) *Effective date.* An order under this section shall be effective as provided in 12 U.S.C. 4581(c) and § 81.84(m).

[60 FR 61888, Dec. 1, 1995, as amended at 61 FR 50218, Sept. 24, 1996]

§ 81.83 Civil money penalties.

(a) *Imposition.* The Secretary may impose a civil money penalty on a GSE that has failed:

(1) To submit, within the time prescribed in § 81.22, a housing plan that substantially complies with 12 U.S.C. 4566(c), as implemented by § 81.22;

(2) To make a good-faith effort to comply with a housing plan submitted and approved by the Secretary; or

(3) To submit any of the information required under sections 309(m) or (n) of the Fannie Mae Charter Act, sections 307(e) or (f) of the Freddie Mac Act, or subpart E of this part.

(b) *Amount of penalty.* The amount of the penalty shall not exceed:

(1) For any failure described in paragraph (a)(1) of this section, \$30,000 for each day that the failure occurs; and

(2) For any failure described in paragraphs (a)(2) or (a)(3) of this section, \$11,000 for each day that the failure occurs.

(c) *Factors in determining amount of penalty.* In determining the amount of a penalty under this section, the Sec-

retary shall consider the factors in 12 U.S.C. 4585(c)(2) including the public interest.

(d) *Procedures—(1) Notice of Intent.* The Secretary shall notify the GSE in writing of the Secretary's determination to impose a civil money penalty by issuing a Notice of Intent to Impose Civil Money Penalties ("Notice of Intent"). The Notice of Intent shall provide:

(i) A concise statement of the facts constituting the alleged misconduct;

(ii) The amount of the civil money penalty;

(iii) Notice of the GSE's right to a hearing on the record;

(iv) The procedures to follow to obtain a hearing;

(v) A statement of the consequences of failing to request a hearing; and

(vi) The date the penalty shall be due unless the GSE contests the matter.

(2) To appeal the Secretary's decision to impose a civil money penalty, the GSE shall, within 20 days of service of the Notice of Intent, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice of Intent.

(3) *Administrative law judge.* A HUD ALJ shall preside over any hearing conducted under this section, in accordance with § 81.84 and, to the extent the provisions are not inconsistent with any of the procedures in this part or FHEFSSA, with 24 CFR part 26, subpart B.

(4) *Issuance of order.* If the GSE consents to the issuance of the order or the ALJ finds, on the hearing record, that a preponderance of the evidence establishes the conduct specified in the notice of charges, the ALJ may issue an order imposing a civil money penalty.

(5) *Consultation with the Director.* In the Secretary's discretion, the Director of OFHEO may be requested to review any Notice of Intent, determination, order, or interlocutory ruling arising from a hearing.

(e) *Action to collect penalty.* The Secretary may request the Attorney General of the United States to bring an